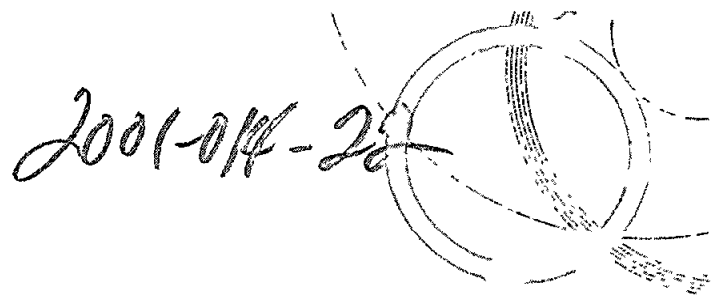


BAE SYSTEMS

2001-014-28



CHARLES D. CHADWICK
VICE PRESIDENT, CONTRACTS

May 4, 2001

General Services Administration
FAR Secretariat (MVP)
1800 F Street, NW
Room 4035
Washington, DC 20405
Attention: Ms. Laurie Duarte

RE: FAR Case 2000-014 -- Contractor Responsibility, Labor Relations Costs, and Costs
Relating to Legal and Other Proceedings -- Revocation

Dear Ms. Duarte:

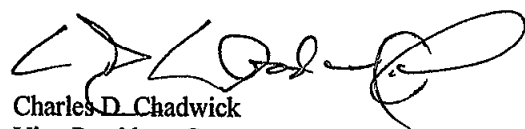
BAE SYSTEMS appreciates the opportunity to comment on the proposed rule, FAR Case 2000-014 (revocation of the so-called "Blacklisting" Regulations). BAE SYSTEMS strongly supports the revocation of these regulations. As we noted in our letter of September 5, 2000, we consider the proposed rule to be ill considered and unnecessary. Current regulatory coverage provides the Government with more than adequate avenues to protect itself against a non-responsible contractor. This rule simply complicates the regulatory environment with little clear benefit to the Government and creates increased compliance costs for contractors. For your reference, a copy of our earlier comments is attached.

We wish to make the following points in support of revocation of the rule:

- The rule creates burdensome and unnecessary record keeping requirements and the necessity for redundant compliance programs. The increased costs of such compliance is unjustified, since little is to be gained by the regulations except the increased possibility of arbitrary and unjustified punitive actions. Setting up the mechanisms for compliance would be a lengthy and – from a practical viewpoint – well nigh impossible task. For large companies, it would require almost constant "sweeps" of the company for the most minor of possible infractions in multiple functional areas. For smaller companies it would impose a burden that will make it undesirable to do business with the Government.
- Contracting Officers are put into an almost impossible position, being asked to understand the relative impact of non-procurement regulations for which they have not been trained nor have the additional resources to assess.
- There is no need for the rule since enforcement mechanisms are in place already by the agencies charged with enforcing the multiple regulations covered by the rule.
- It allows Contracting Officers to deny contractors access to federal contracts without the protection of due process. Contractors could be found non-responsible on only the allegation of a violation.

We appreciate the opportunity to submit these comments. If you wish to discuss any of these comments, please do not hesitate to contact me on (301) 838-6700 or via e-mail at charles.chadwick@baesystems.com.

Very truly yours,



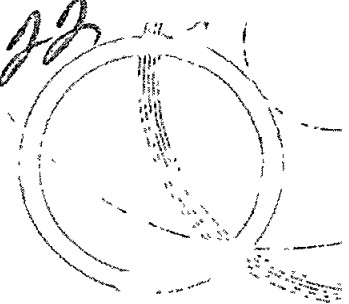
Charles D. Chadwick
Vice-President, Contracts
BAE SYSTEMS North America

Attachment: BAE SYSTEMS Letter of September 5, 2000

BAE SYSTEMS NORTH AMERICA, 1601 Research Blvd., Rockville, MD 20850-3173
Telephone (301) 838-6700; Fax (301) 838-6942

Rec'd
5/7/01

2001-014-22



CHARLES D. CHADWICK
VICE PRESIDENT, CONTRACTS

September 5, 2000

General Services Administration
FAR Secretariat (MVR)
1800 F Street, NW
Room 4035
Washington, DC 20405
Attention: Ms. Laurie Duarte

RE: FAR Case 1999-010 -- Contractor Responsibility, Labor Relations Costs, and Costs
Relating to Legal and Other Proceedings ("Blacklisting" Regulations)

Dear Ms. Duarte:

BAE SYSTEMS appreciates the opportunity to comment on the proposed rule, FAR Case 1999-010 (the so-called "Blacklisting" Regulations). BAE SYSTEMS considers the proposed rule to be ill-considered and unnecessary. Indeed, it is contrary to the thrust of many recent procurement reforms. Current regulatory coverage provides the Government with more than adequate avenues to protect itself against a non-responsible contractor. Although we note specific instances below where the rule could be improved by revised language, it is our position that there is no need for the rule at all. It simply complicates the regulatory environment with little clear benefit to the Government and creates increased compliance costs for contractors. Specific comments follow.

1. 9.103(b) "Contracting Officers should coordinate non-responsibility determinations based upon integrity and business ethics with legal counsel." This means that it is not mandatory that the Contracting Officer confer with legal counsel. It is discretionary. When a contracting officer determines that a contractor is non-responsible for reasons of lack of integrity and business ethics, review by legal counsel should be mandatory. The determination is a matter of significant import and potentially highly damaging to a contractor's reputation. It should not be at the discretion of any single individual. In addition, such a review would contribute to consistent application of standards for the review.

We recommend that the language be changed to read: "Contracting officers shall coordinate with agency legal counsel on all non-responsibility determinations based on integrity and business ethics."

2. 9.104-1(d) "Have a satisfactory record of integrity and business ethics including satisfactory compliance with federal laws including tax laws, labor and employment laws, environmental laws, antitrust laws, and consumer protection laws." The language provides no definition of "satisfactory". Hence, it becomes a subjective determination. It can easily lead to highly inconsistent application of the rule, particularly given the expansion of the scope of the clause from normal business ethics (fraud, waste and abuse) to attempt to cover all laws and regulations. This clause was intended to cover normal business ethics. As revised it could be used in a punitive manner against a contractor where there is a minor disagreement on something as innocuous as a consumer protection dispute. It provides unions and other third parties with inappropriate influence over the process of federal contracting.

We recommend that no change be made to the current wording of 9.104-1(d).

General Services Administration
Attention: Laurie Duarte
September 6, 2000
Page 2

2001-014-22

3. 9.104-3(c) " In making a determination of responsibility based upon integrity and business ethics (see 9.104-1(d)), contracting officers may consider all relevant credible information." What constitutes "all relevant credible information?" What constitutes "indications a contractor has been found to have violated...law"? For example, is an indictment "credible information" when there has been no conviction? Will the CO depend only on self-disclosure in connection with the certification?

The expansion of this clause and the ambiguous language of "complaints...indicating" allow a CO an unbounded discretion in finding a contractor non-compliant. The existing regulations adequately protect the Government's interests.

We recommend that no change be made to the wording of the clause.

4. 9.104-3(c) "Contracting officers should give greatest weight to decisions within the past three years preceding the offer...." How far back should a contracting officer go to make this determination? Even if a contractor has been convicted and made retribution or paid fines, the contracting officer can still determine them non-responsible even if the decision was several years old. This could be construed as allowing the clause to be used in a punitive manner. Effectively, there is no statute of limitations here.

We recommend that the proposed language be changed to read: "Contracting officers **shall consider only those matters that have occurred** within the past three years preceding the offer..."

We appreciate the opportunity to submit these comments. If you wish to discuss any of these comments, please do not hesitate to contact me on (301) 838-6700 or via e-mail at charles.chadwick@baesystems.com.

Very truly yours,

/s/

Charles D. Chadwick
Vice-President, Contracts
BAE SYSTEMS North America